FILED
September *29, 2004*
NEW JERSEY STATE BOARD OF MEDICAL EXAMINERS

STATE OF NEW JERSEY
DEPARTMENT OF LAW & PUBLIC SAFETY
DIVISION OF CONSUMER AFFAIRS
STATE BOARD OF MEDICAL EXAMINERS

In **the** Matter of:

JEBAMONI AMBROSE, M.D.

FINAL **DECISION AND** ORDER

This matter **was** opened before the New Jersey State Board of Medical Examiners (the "**Board**") **on** July 30, 2304 **upon** the filing of a Complaint by fhe Attorney General of **New** Jersey alleging that respondent Jebamoni Ambrose had failed **to** cooperate in an investigation of hrs medical practice being conducted by the Bcard, and had thereby violated N.J.A.C. 13:45C-1.2 and N.J.A.C. 13:45C-1.3(a)(5), which **conduct** in turn was **alleged to** constitute professional or occupational misconduct within the meaning of N.J.S.A. 45:1-21(e) and (h). The Attorney General sough: the imposition of, inter *alia,* the suspension of the **licence** of **Us.** Ambrose **until** such time as he appeared and gave testimony before a Committee of the Board regarding his medical practice, an order compelling respondent to appear and testify before *a* Committee of the Board, and the imposition of **civil** penalties hid costs. **An** Order to Show Cause requiring respondent to appear before the Board or. August 11, 2004, and **then show** cause why an **order** suspending his license and/or imposing suck other **measures** and relief as the Board

might deem appropriate was simultaneously filed and served upon respondent.

Respondent flied a written answer *to* the complaint dated August 2, 2034, wherein he admitted the vast majority of factual claims within the Complaint, but in essence sought dismissal of the complaint on the basis of nineteen posited defenses. Thereafter, the initial return date of this matter on August 11, 2304, was adjourned and the hearing was rescheduled for September 8, 2004 to accommodate a request made on August 9, 2004 by respondent's counsel Mr. Eldridge Hawkins (the adjournment request was made based on a death that occurred in Mr. Hawkins' family). Although the Attorney General opposed the grant of an adjournment (absent an agreement by responden: to surrender his license or to refrain from prescribing controlled dangerous substances until such Line as this matter could be heard by the Board), we granted the adjournment conditioned upon Dr. Ambrose's commitment that he would appear before the Board on September 8, 2004.'

Following the granting of the adjournment, the parties were specifically advised in writing that on September 8, 2004, a hearing would be held by the Board to determine whether or not to sustain the allegations made within the verified complaint. The parties were further advised that in the event charges were sustained at the conclusion of the hearing, the Board would then make a determination whether to impose any or all of the relief sought in the complaint, and in such event respondent could then present any testimony or documents in mitigation of penalty which he might ask the Board to consider before imposing sanctions.

Prior to the return dare of this matter, the Board was notified that Dr. Ambrose filed an Order to Show Cause and Complaint In the Superior Court of New Jersey, Mercer County, naming the State Board of Medical Examiners as defendants (along with other named and unnamed individuals), Dr. Ambrose sought, in his Superior Court action, *to* enjoin the Order to Show Cause which had been entered by the Board and to enjoin the Board from holding a hearing on the Attorney General's filed complaint. We are advised that arguments of counsel were entertained *by* Judge Patrick F. McManimon, J.S.C. or. September 8, 2004 (the Superior Court argument occurred in the morning before the Board's 1:00 p.m. hearing), following which a written Crder was entered by Judge McManimon denying Dr. Ambrose's request to enjoin the Board's hearing and denying all relief sought by Dr. Ambrose.

On September 8, 2004, respondent appeared before the Board, represented by Eldridge Hawkins, Esq. Deputy Attorney General Daniel S. Goodman appeared for the complainant Attorney General. As the parties had been advised would occur, we first conducted a hearing to determine whether the allegations made in the complaint fIled against respondent Ambrose were proven. At said hearing, the Attorney General relied solely on documentary evidence to support his case, to include a series of letters that were forwarded between counsel for Dr. Ambrose and the Board and/or the Attorney General's office, as well as the transcript of Dr.

Ambrose's appearance before a Preliminary Evaluation Committee of the Board on June 14, 2004.[1] Respondent did not testify during the

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[1] The Attorney General's case was supported by the following documents which were introduced into evidence without objection:

P-1 Certification of Deputy Attorney General Mary Kate Simmons, dated July 29, 2004.

P-1a Letter from William V. Roeder, Executive Director of the Board, to Jebamoni Ambrose, M.D. dated February 26, 2004.

P-1b Letter from William V. Roeder to Eldridge Hawkins, Esq. dated June 9, 2004.

P-1c Letter from Eldridge Hawkins, Esq. to Deputy Attorney General Mary Kate Simmons, dated April 6, 2004.

P-1d Letter from Eldridge Hawkins, Esq. to Deputy Attorney General Mary Kate Simmons, dated June 3, 2004.

P-1e Letter from Eldridge Hawkins, Esq. to Deputy Attorney General Mary Kate Simmons dated June 10, 2004.

P-1f Letter from Eldridge Hawkins, Esq. to Deputy Attorney General Mazy Kate Simmons dated June 11, 2004.

f-2 Certification of Deputy Attorney General Daniel S. Goodman, dated July 33, 3004

P-2a Letter from Deputy Attorney General Daniel S. Goodman to Eldridge Hawkins, Esq. dated June 14, 2004.

P-3 Certified Transcript of the Preliminary Evaluation Committee meeting that Dr. Ambrose attended on June 16, 2004.

F-4 Board policy on the Election of Officers, as established at the July 11, 1984 Eoard

liability portion of the hearing, instead basing his defense on an assortment of legal arguments made by Mr. Hawkins to include arguments that the Board was acting in an improper manner and that Dr. Ambrose's constitutional rights were being abridged by the Board.

Following the liability portion of the hearing, we unanimously concluded that the evidence introduced by the Attorney General supported the charges made that respondent had violated the Duty to Cooperate regulations. Specifically, we found that respondent violated the Duty to Cooperate regulations by refusing to answer any questions, and refusing to participate in any manner, when he appeared before a Preliminary Evaluation Committee of the Board on June 16, 2004. Respondent engaged in the very sort of obstructive and contumacious conduct which the Duty to Cooperate regulations are intended to both deter and provide an avenue to redress. As set forth in greater detail below, we reject the assortment of legal arguments that have been made by respondent's counsel challenging the authority of the Board to proceed in this matter, finding all such arguments to be without merit.

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meting, dated July 11, 1984.

P-5 Board policy on the procedures when the Board President is absent or unavailable, as established at the July 11, 1984 Board meeting, dated July 11, 1984.

We then continued the hearing to consider the question of penalty to be imposed. At that tine, Dr. Ambrose made a statement under oath to the Board, wherein he did not address the substance of the allegations regarding his conduct when appearing before the Board investigative Committee on June 16, 2004, but instead questioned how the Board could take an action to suspend his license when he professed to have engaged in no misccnduct. The Attorney General then urged that we suspend Dr. Ambrose's license until such time as he in fact appeared before a Bcard Committee and cooperated in the investigative process, and that we impose fines and assess costs.

On balance, we have concluded that respondent's conduct warrants the imposition of a formal reprimand, the assessment of a civil penalty of 510,000 and the imposition of a requirement that he pay costs that *were* incurred to prosecute this matter. We decline t.3 presently suspend his license, and instead will order that *he* appear before *a* Committee of the Board on November 3, 2004, and then cooperate with the investigative process. In the event respondent fails to do so on November 3, 2004, however, we herein prospectively order that his license should then be immediately suspended until such time as he in fact appears before the Board and cooperates with the Board's investigation. We set forth below the findings of fact and conclusions of law which we have reached,

and discuss the basis for our rejection of respondent's claims and the basis for the penalty we impose herein.

Findings of *Fact*

Basad cn the evidence presented, we find as follows:

1. Respondent was directed, by letter *dated* February 26, 2004, to appear before a Committee of the Board on April 7, 2004 (P-1a). Within said letter, respondent was notified that the Eoard was authorized to conduct an inquiry by N.J.S.A. 45:1-18. Respondent was given notice that the inquiry was based upon, but not limited to, his care and treatment of S.B., E.J.D. and C.D., as well as his overall practice of medicine. Respondent was further advised in the letter that, "as a licensee, *yo::* have a duty to cooperate in any inquiry of the Board pursuant to N.J.A.C. 13:45C-1.2." Finally, respondent was then directed *'to* bring with him original patient and billing records for the identified patients, his curriculum vitae and a list of continuing education courses/credits completed, and respondent was informed that he could retain an attorney tc appear with him before the Committee.

2. A request was thereafter made by Dr. Ambrose's counsel, Eldridge Hawkins, Esq., for an adjournment of the April 7, 2004 appearance date (P-1c).

3. The Board granted the adjournment request, and the appearance was rescheduled for June 16, 2004. (P-1b). A letter dated June 3, 2004, was forwarded *by* the Board's Executive

Director, William V. Roeder, to Mr. Hawkins, wherein respondent was again advised that the Board's inquiry was based upon, but not limited to, respondent's care and treatment of patients S.B., E.J.D. and C.D.

4. Four letters were sent by Mr. Hawkins to Deputy Attorney General Simmons requesting that discovery be provided and/or that Dr. Ambrose be advised of any charges against him in advance of his appearance before the Committee (P-1c, P-1d, P-1e, P-1f). Mr. Hawkins initially requested "immediate turnover of all charges, discovery, statements, etc. upon which the State is relying in this matter" in a letter to Deputy Attorney General Simmons dated April 6, 2004 (P-1c), and forwarded a second copy of said letter to D.A.G. Simmons by way of correspondence dated June 3, 2004 (P-1d). Mr. Hawkins thereafter repeated his request to be provided copies of my complaint against Dr. Anbrose and discovery in letters to D.A.G. Simmons dated June 10, 2004 (P-1e) and June 11, 2004 (P-1f).

5. Following receipt of the April 6, 2004 and June 3, 2006 letters, Deputy Attorney General Simmons telephoned Mr. Hawkins and "informed him that this proceeding was an investigative inquiry and that no administrative complaint had been filed against Respondent. Therefore, Responden', was not entitled to any discovery at this point In time." (Certification of Deputy Attorney General Mary Kate Simmons dated July 29, 2004, ¶9, P-1 in evidence).

6. A letter dated June 14, 2004 was sent from Deputy Attorney General Daniel Goodman to Mr. Hawkins generally addressing claims raised in Mr. Hawkins' letters to Deputy Attorney General Simmons (P-2a). Within said letter, D.A.G. Goodman advised Mr. Hawkins That he was assigned to handle the matter of Dr. Ambrose, and then asserted that Dr. Ambrose's appearance before the Preliminary Evaluation Committee was authorized by N.J.S.A. 45:1-18 and was a fact-finding, investigative proceeding, rather than a judicial or quasi-judicial proceeding (D.A.G. Goodman cited DelTufo v. J.N., 268 N.J. Super. 291 (App. Div. 1993) in support of his statements). D.A.G. Goodman further stated that Dr. Arnbrose did not have "any right to discovery prior to the establishment of a contested case" and asserted that "the Board is not required to furnish you with *any* of the documents that it *may* rely upon in questioning Dr. Ambrose during this investigative inquiry." D.A.G. Goodman nonetheless did provide Mr. Hawkins with additional information about the subject matter of the appearance and acknowledged that Dr. Ambrose would be free to assert his 5th Amendment rights in response to questions that might be posed during the investigation; specifically, D.A.G. Goodman wrote:

> Nonetheless, as I explained to you on Friday, in order to facilitate your client's appearance before this Committee, Dr. Ambrose should be prepared to discuss his entire care and treatment for the following three patients: S.B. (deceased), E.J.D. and C.D. More specifically, Dr. Ambrose should be prepared to discuss his prescribing practices with regard to these patients, as well as his record keeping practices. Should a

question arise during this proceeding where you believe that Dr. Ambrose's 5th Amendment rights need to be protected, you can certainly place your objection on the record at that tine. Otherwise, Dr. Ambrose will be expected to fully cooperate during this inquiry, pursuant to the provisions of the Board's Duty to Cooperate regulations. (P-2a)

7. Dr. Ambrose appeared before the Committee on June 16, 2004 (See Transcript of Proceedings of June 16, 2004; P-3). Before the inquiry commenced, Mr. Hawkins asserted that the Board was without legal authority to conduct an investigation of Dr. Ambrose in the manner in which the Board sought to proceed and that the Board was attempting to conduct the inquiry in a manner contrary to the New Jersey and United States Constitutions and contrary to legislative mandates (see P-3, 6:1 -- 10:17). Mr. Hawkins then further asserted that Dr. Ambrose could not answer any questions unless he was ordered to do so by the Attorney General and thereby afforded immunity from criminal prosecution (P-3, 10:18-11:16), and asserted that the Board's process of investigating information and then adjudicating complaints was contrary to constibutional principles. (P-3, 11:17-12:21). Mr. Hawkins further asserted that the Board's procedures were "blatantly unconstitutional" (P-3, 13:3) and advised that "until my client has the constitutional due process protection of even knowing what he's charged possibly with, we can't proceed." (P-3 13:19-13:23, emphasis added; see also 15:19-21, "I can't (allow my client to testify) because there were no charges, no allegations...", see also P-3, 21:10 -- 21:22,

"That's the point, I don't know what you're investigating. Nobody has told me the specifics. I can surmise that [the inquiry would concern the circumstances surrounding Dr. Ambrose's prescribing and his record keeping], [b]ut I still don't know what allegation regarding which patient that I'm here to defend."). Although Deputy Attorney General Goodman did point out to Dr. Ambrose and his counsel that the Duty to Cooperate regulations obligated Dr. Ambrose to parricipate in the investigative process (P-3, 23:2 -- 23:7), Mr. Hawkins specifically stated that he would not allow Dr. Ambrose to testify concerning his care and treatment of patients S.B., E.J.D. and C.D. because he couldn't "allow anything that's unconstitutional." (P-3; 23:22-24:15).

e. In light of Dr. Ambrose's position, the investigative inquiry was adjourned by the Committee and no questions were posed to Dr. Ambrose.

Conclusions of Law

1. The Board is authorized to conduct investigations of care provided by any licensee to a patient or patients, in order to protect the public health, safety and welfare, see In re Polk License Revocation, 90 N.J. 550, 566 (1982). The Board is authorized by law to conduct investigations by requiring licensees to appear an6 give testimony under oath. N.J.S.A. 45:1-18. Neither the Uniform Enforcement Act, N.J.S.A. 45:1-14 et seq., the Administrative Procedure Act, N.J.S.A. 52:14B-1 et seq., nor any

other statute(s), obligate the Board to provide discovery to an individual who is the subject of an investigation during the investigative process (i.e., prior to the filing of a complaint and the commencement of a contested case:. Further, Board investigations may properly be conducted without having first charged a licensee with a violation of law -- indeed, a fundamental purpose of any investigation is to determine whether or not cause exists to charge an individual with a violation of iaw. See N.J.S.A. 45:1-18.[3] Respondent's claims that he could no?. proceed and could not. answer questions posed to him by the Board without having been advised cf the charges against him were spurious.'

See also N.J.S.A. 45:9-19.3, wherein the Legislature explicitly recognizes that the result of any Board inquiry may be a determination that there Is no basis for action against: the licensee.

We suggest to the parties that the legal argument. that was presented concerning the issue whether the proceeding to be held before the Preliminary Evaluation Committee was more properly labeled an "inquiry" or a "hearing" was misplaced. We note initially that the statute authorizing the Board to require licensees to appear and offer testimony under oath during the pendency of an investigation, N.J.S.A. 45:1-18, uses the terms interchangeably ("In order to accomplish the objectives of this act ..., the Attorney General may hold such investigative hearings as may be necessary and ... may issue subpoenas to compel the attendance of any person ... at any such hearing or inquiry" (emphasis added). Rather, we suggest that the distinction that should be drawn arid recognized herein is between a pre-complaint investigative proceeding (regardless whether it is labeled an "investigative inquiry" or "investigative hearing'"! and a post.-complaint proceeding. Dr. Ambrose was asked to appear before the Preliminary Evaluation Committee far a pre-complaint investigative proceeding. As set forth above, there are no statutory provisions that mandate that an individual who is to appear before a Board for an investigative proceeding be provided discovery, nor are there

2. In this case, Dr. Ambrose was in fact given sufficient notice of the natura of the inquiry that was to be conducted by the Board. Specifically, respondent was advised in writing in advance of his June 16, 2004 appearance and orally at the time of his appearance, that the General focus of the Board's inquiry was upon his care and treatment of three specific patients, his prescribing practices for those patients and his record-keeping practices. Respondent thus had notice of the intended focus of the Board's inquiry, which notice should have afforded respondent adequate opportunity to prepare for his appearance before the Preliminary Evaluation Committee.

3. Respondent's assertion that *he* would not answer any questions unless he was first giver. immunity pursuant to N.J.S.A. 45:1-20 was an improper invocation *of* N.J.S.A. 45:1-20. A licensee who asserts that he or she has a well-founded basis tc believe that answering a specific question would involve self-incrimination nay assert the privilege against self incrimination and then seek the immunity afforded by N.J.S.A. 45:1-20. Hirsch v. N.J. State Bd. of Med. Exam., 252 N.J. Super. 596, 508 (App. Div. 1991), aff'd 128 N.J. 160. The claim must be asserted in good faith and a basis for the claim must exist. Id. If, after raising such a claim, a

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any statutory provisions that establish an individual right to be provided with those documents that may be the basis for questioning to be conducted by the Board during an investigative proceeding.

licensee is instructed to answer a specific question, then the licensee must comply with the directive and, by doing so, the licensee automatically acquires immunity pursuant to N.J.S.A. 45:1-20. Id. At 609. As recognized in Hirsch, a licensee may only assert the privilege against self-incrimination in the course of a Board investigation in response to questions which legitimately raise concerns of possible criminal immunity. Thus, in Hirsch, the court recognized that while a licensee could assert his 5th Amendment privilege and refuse to answer three specific questions on a licensure application, the licensee could not assert the privilege as a basis to refuse to answer any other questions on the application, which questions did not raise any 5th Amendment concerns. Id. [holding That licensees who were propounded questions by the Board on a renewal application could assert the privilege against self-incrimination to three questions which related to drug use or abuse, and seek immunity pursuant to N.J.S.A. 45:1-20 in lieu of responding to those questions, but that. the liter-sees must answer all other questions on the application).

4. Dr. Ambrose did not properly assert his 5th Amendment privilege against self-incrimination when appearing before the Board. The privilege against self-incrimination is personal to the individual claimant and must be exercised by the witness, under oath, after hearing a question or questions addressed to him. The privilege against self-incrimination must be asserted by the

witness himself and may not be invoked by an attorney as a surrogate for the witness. See State v. Jennings, 126 N.J. Super. 70 (App. Div. 1972), cert. denied 6C N.J. 512, In re Bojardo, 34 N.J. 599 (1961), State v. Williams, 59 N.J. 493 (1971), I/M/O John Doe, 294 N.J. Super. 108 (Law Div. 1996), aff'd 302 N.J. Super. 255 (App. Div. 1997), cert. denied, 151 N.J. 468, cert. denied 523 U.S. 1096 (1998). Most significantly, a licensee may not simply make a "blanket" 5th Amendment claim and refuse to answer any questions that nay be posed to him; rather, a witness may only assert a 5th Amendment claim in response to a specific question, and thereby create a record which. wcuid afford the Attorney General the opportunity to challenge the legitimacy of any claim of privilege in a court proceeding. Doe, supra. A licensee therefore nay not refuse to answer any question that may be asked of him and condition his participation in an investigative proceeding on being granted immunity before any specific question is asked of him which would engender a 5th Amendment cieim.

We point out that we herein are not seeking to speculate or make any determination whether Dr. Ambrose may have had a good faith basis to assert the 5th Amendment privilege against self-incrimination in response to any specific question that may have been posed to him at the investigative inquiry. Respondent's counsel claimed that he had grave concerns regarding possible criminal immunity pursuant to N.J.S.A. 45:1-13 (which we note is

not a criminal statute} and N.J.S.A. 24:21-1 et seq. We note, however, that if the criminal statutes regarding illegal prescribing of Controlled Dangerous Substances were the *basis* for respondent's concerns, it is difficult if not impossible to conceive haw such statutes might have provided a good faith basis for respondent to have refused to answer general questions that likely would have been asked at the investigative inquiry regarding his care and treatment of the three patients who were the subject of the Board's inquiry, concerning his medical record-keeping, or concerning what continuing education courses and training respondent may have recently taken.

5. Dr. Ambrose violated the Board's Duty to Cooperate regulations, specifically N.J.A.C. 13:45C-1.3(a)(5) and N.J.A.C. 13:45C-1.2 [1], by refusing to participate in the investigative

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N.J.A.C. 13:45C-1.3(a)(5) states:

> (a) The following conduct by a licensee may be deemed a failure to cooperate, and therefore, professional or occupational misconduct and grounds for suspension or revocation of licensure:
>
> > (5) The failure to answer any question pertinent to an inquiry made pursuant to N.J.S.A. 45:1-18 or other applicable law unless the response to said question is subject to a *bona fide* claim of privilege.

N.J.A.C. 13:45C-1.2 further provides:

> (b) A Licensee's failure to cooperate, absent good cause or bona fide claim of privilege ... may be deemed *by* the board, the Director or the licensing agency *to* constitute professional or occupational misconduct...

inquiry a d refusing to answer any question that might have been posed to him by the Committee of the Board on June 14, 2304. Respondent's blanket refusal to participate and his blanket refusal to answer any question that might have beer! posed to him did not constitute good cause not to participate in the Board's investigation nor did such refusal constitute a bona *fide* claim of privilege.[6]

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[6] When appearing before the hard on September 8, 2004, Mr. Hawkins stated that Dr. Arnbrose was in fact willing to come before the Board and voluntarily answer questions provided that the Attorney General stipulated that. by doing so Dr. Ambrose would not be waiving his 5'' Amendment. rights. We found the abcve statement to be clearly contrary to the position that Dr. Ambrose took when he appeared before the Preliminary Evaluation Committee. In any event, however, it is clear that there was never any suggestion made by the Attorney General that Dr. Ambrose would have waived his 5'' Amendment rights had he been sworn in and answered questions that did not raise 5'' Amendment concerns before the Committee, nor are we aware of any legal support for respondent's assertion that he would have been deemed to have done so had he in fact answered a single question posed to him by the Committee (indeed, we note that the Attorney Genera: had specifically advised Mr. Hawkins in writing in advance of the investigative inquiry that Dr. Ambrose could claim his 5'' Amendment privilege during the course of the proceeding).

We herein note that it is our understanding, based on tho, law outlined above, that the 5'' Amendment privilege can only be claimed in response to a specific question. Accordingly, when Dr. Ambrose appears before the Board or. November 3, 2004, *he* is advised that this Board will not take the position that he would waive any 5 Amendment rights he may have by answering any specific question that is posed during the inquiry. Rather, Dr. Ambrose will then be free (provided he acts in good faith) to interpose an objection *to* any specific question posed to him based on his 5'' Amendment privilege, and to then request that the statutory immunity afforded by N.J.S.A. 45:*1-20* be conferred upon him prior to answering the specific. question at issue. Should the Attorney General take the

6. Respondent's violation of the Duty to Cooperate regulations constitutes professional misconduct. The Board may suspend or revoke respondent's license, or impose other penalties authorized by law, pursuant to N.J.S.A. 45:1-21 (e; and (h) (providing at subsection (e) that the Board may suspend a license if a licensee engages in professional or occupational. misconduct and at subsection (h) if the licensee has failed to comply with any act or regulation of the Board).

Additional Arguments *of Dr. Ambrose*

At the hearing before the Board, respondent made additional arguments challenging the manner in which the Attorney General and the Board sought to proceed in this matter, to include arguments that: (1) the Order to Show Cause was illegally filed and/or defective because it was signed by the Board Vice-President and did not: bear a Board seal; (2) the Board could not take any action against Dr. Ambrose unless it found that he presented a clear and imminent danger to the public health safety and welfare; (3) the Board may nor: *proceed* by way of Order to Show Cause; (4) the Board should have proceeded by first serving a subpoena on Dr. Ambrose and then seeking a Superior Court order finding Dr. Ambrose in contempt of court and suspending his license pursuant to

position that any 5th Amendment claim Dr. Ambrose may then make is without appropriate basis or not made in good faith, the Attorney General would then have the right to seek to challenge Dr. Ambrose's claim(s) in Superior Court.

N.J.S.A. 45:1-19; and (5) Dr. Ambrose should not be held accountable by the Board of Medical Examiners for acting on the advice of his attorney.' For the reasons set forth below, we reject all of respondent's arguments.

a. *Claim* that *the* ***Order*** *to* Show *Cause was Defective*

Respondent: initially moved to dismiss the Complaint and Order to Show Cause based on an argument that the Order to Show Cause was illegally filed and/or defective because it was signed by the Vice-President of the Board and because it did not bear a seal of the Board. Respondent maintained that the Board is authorized by statute to elect only a President, Secretary and Treasurer, and thus claimed that the Board was without statutory authority to elect a Vice-President. Respondent further contended that statutes require any Order to Show Cause issue" by the Board to bear the Board's seal.

We reject respondent's claim, finding that the Order to Show Cause was properly entered. While N.J.S.A. 45:9-2 requires the Board to elect a president, secretary and treasures from its membership, the statute in no way precludes or forbids the Board from creating other officer positions and electing other officers. The Board, on July 11, 1984, established the position of a Vice-

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To the extent respondent made additional arguments challenging the manner in which the Board proceeded in this matter, we do not herein address such arguments as we find any further arguments to have been clearly without merit, or to have sought to challenge matters which have long been settled.

President (see Board Policy on "Election of Officers" established on July 11, 1984, P-4 in evidence) and determined further that the Vice-president would be authorized to act as the President: *pro tern* when the President was not available (see Board Policy on "Absence of President" established July 11, *1984*, P-5 in evidence). The Eoard has since elected a Vice-President for a period of twenty years, and never before has any challenge been made to the authority of the Board to elect a Vice-President or to the authority of the Vice-President to act in the absence of the President. We reject Dr. Ambrose's challenge as being clearly without merit.

On the issue of the seal, we note ttat while N.J.S.A. 45:9-2 requires the Board to have a common seal, and requires that subpoenas compelling the attendance of witnesses to testify before the Board issue under the seal of the Board, the statute does not require that the Eoard seal be affixed to complaints that may be filed with the Board or to Orders to Show Cause which may issue. Neither N.J.S.A. 45:9-2, nor any other provision of law of which we are aware, thus supports respondent's argument.

We further are constrained to point out that we find respondent's claims that this proceeding cannot continue because the Order to Show Cause was signed by *the* Vice-President and because a Board seal was not affixed to it to be *de minimus* attempts tc elevate form over substance. What is important, and

what is without dispute, is that respondent clearly had notice that a Complaint was filed against him charging him with a violation of the Duty to Cooperate regulations, clearly had notice that the Board intended to conduct a hearing on said Complaint and clearly had notice that the Board was authorized to impose sanctions in the event the charges *in* the Complaint were sustained. Responden: also was afforded adequate time to prepare far said hearing, particularly given the one month adjournment that was granted. Respondent has not, and Cannot, legitimately claim that he has been in any way prejudiced by virtue of the fact that the Crder to Show Cause was signed by the Vice-President rather than the President.

b. Claim that Action *could only be taken upon a showing of clear end imminent danger*

Respondent additionally argued that the Board could nut, take any actio,? against Dr. Ambrose unless it found that he presented a clear and imminent danger to the public health safety arid welfare. While it is the case that N.J.S.A. 45:1-22 provides that a board may enter a temporary order suspending or limiting any license issued pending plenary hearing on an administrative complaint upon a palpable demonstration of clear and imminent danger to the public health, safety and welfare, in this case the Attorney General did not proceed pursuant to N.J.S.A. 45:1-22, but rather proceeded pursuant to N.J.S.A. 45:1-21 (e) and (h) and pursuant to N.J.A.C. 13:45C-1.1 et seq., which clearly provide that

a license may be suspended when a licensee fails to cooperate in a Board investigation and/or engages in professional or occupational misconduct (without any requirement that a showing be made of clear and imminent danger to the public).

Respondent was in fact afforded an opportunity to appear for a hearing on the administrative complaint filed in this matter, which hearing was appropriately limited in scope an3 focus to the sole issue raised herein -- whether respondent had violated the Board's Duty to Ccoperate regulations by his refusal to be sworn and to answer questions under cath when he appeared before the Board's Preliminary Evaluation Committee on June 14, 2004. It is well-established that the standard of proof in such proceedings is a showing by the preponderance of the evidence presented (which threshold was clearly met ana indeed exceeded herein). See Matter of Polk, 90 N.J. 555 (1982).

c. Claim that proceeding by way of Order to Show Cause was improper.

Respondent's remaining claims -- namely, that proceeding by way of Order to Show Cause was improper; that the Ecard's remedy should have been to subpoena respondent to appear and then require the Attorney General to apply to Superior Court to obtain an Order adjudging Dr. Ambrose in contempt; and that Dr. Ambrose should not be accountable in this case because his actions were taken upon advice of counsel -- are all claims which were raised and rejected in the Matter of W.C., a prior action brought before the Board

wherein the Attorney General sought to suspend the license of a physician, Dr. W.C., for a violation of the Duty to Cooperate regulations (specifically, for failing to allow investigators to inspect her office premises). See In the Matter of W.C., Final Decision and Order, filed December 26, 1997. We herein reject Dr. Ambrose's claims for substantially the very same reasons set forth in the W.C. decision.

We thus find the claim advanced by Dr. Ambrose that the Board may not proceed by way of Order to Show Cause to be without merit, just as we did when the same claim was raised by Dr. W.C. The OAL rules specifically recognize that an Order to Show Cause may be utilized as an alternative method of commencing a formal plenary proceeding in an expedited matter. See N.J.A.C. 1:1-9.2. Given the important interests necessarily underlying this matter, and the paramount need to ensure that investigations are conducted in a timely fashion, we find the commencement of this action by way of Order to Show Cause and filed complaint to have been appropriate and consistent with OAL rules.

d. Claim that the Board should have subpoenaed respondent to appear and then sought a Court order imposing sanctions for failure to comply with subpoena pursuant to N.J.S.A. 45:1-19.

We reject respondent's claim that the Board should have proceeded by first serving a subpoena on Dr. Ambrose and then, if Dr. Ambrose did not testify, seeking a Superior Court order finding Dr. Ambrose in contempt of court and suspending his license

pursuant to N.J.S.A. 45:1-19. The Board is clearly authorized to examine any person under oath in connection with any act or practice subject to an act or regulation administered by the Board. N.J.S.A. 45:1-18. While N.J.S.A. 45:1-18 authorizes the Board to issue subpoenas to compel the attendance of any person at an investigative hearing, the statute in no way requires that the appearance be directed by subpoena.

In this case, Dr. Arnbrose was directed by letter to appear before *a* Committee of the Board, and the appearance was then rescheduled to accommodate his scheduling needs. The Duty to Cooperate regulations clearly provide a basis for bringing an action for failure to cooperate in an investigative inquiry, and we find the Attorney General's reliance on the Duty to Cooperate regulations to support this action to be appropriate and to provide a expeditious and economical means to seek to ultimately secure Dr. Ambrose's cooperation in chis investigation (as opposed to the greater time and cost expenditures that would accompany an application to Superior Court).

As we held in the matter of W.C., the Duty to Cooperate regulations provide an alternate means for the Attorney General to seck to compel a licensee who obstructs an investigation to comply with the investigation. What we then stated bears repeating herein:

> The Board and the Attorney General are not limited to ... judicial applications to

> counter attempts at frustrating or slowing down investigations, nor should they be forced to expend tremendous resources through court applications ... The Board may, as recognized in the past in Calem [Calem v. New Jersey State Board of Dentistry, unreported (Appellate Division Dkt. No. A-3516-84T6, filed July 7, 1995, appended ta Board Order in the Matter of W.C.], choose to pursue a disciplinary action, and attempt to obtain swift. compliance. In the Matter of W.C., Final Decision and Order, p. 18-19.

In sum, we find the Attorney General's election to pursue action in this matter by way of bringing an action alleging violation of the Duty to Ccoperate regulations to be unquestionably authorized by law.

e. *Claim that Dr. Ambrose should* not *be held accountable* for *following legal advice* of *counsel.*

In oral argument before the Board, Mr. Hawkins' beseeched the Board not to penalize his client for having followed his legal advice. While we are not unsympathetic to the plight Dr. Ambrose finds himself *in,* particularly if his *decision* not to participate was in fact cne made solely at the advice of his counsel and not his own decision, the responsibility to comply with the *Duty* 'io Cooperate regulations rests solely and squarely with the licensee physician. we cannot call an attorney to account to the Board in a disciplinary action, bat only have jurisdiction to enforce statutory and regulatory mandates against licensed physicians.

Just as we did in the W.C. case, we reject any claim that a licensee may evade the mandates of Board statutes or regulations

by claiming that his or her decision not to comply with said mandates was made upon recommendation of counsel. Simply put, it is Dr. Ambrose's obligation, and Dr. Ambrose's obligation alone, to be familiar with and to conduct himself in accordance with the statutes and regulations governing the practice of medicine in the State of New Jersey, to include the Duty to Cooperate regulations. For all the reasons set forth above, we conclude that respondent has not done so in this case."

Penalty

We turn finally to the question of penalty to be imposed. We begin by noting that what Dr. Ambrose has done in this case is nothing less significant than to seek to stymie the ability of the Board to investigate a matter of concern to the public health, safety and welfare. By setting up unreasonable if not patently frivolous roadblocks to the Board's investigation progress, Dr. Ambrose has sought to preclude the Bcard from being able tc conduct an investigation in a timely and responsible manner. The Duty to

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As a final point, we note that any potential need to continue our initial Order that the documents supporting the complaint made in this case be maintained under seal has been obviated by respondent's election to file a Superior Court action, and to then append all such documents to firs publicly filed complaint. The documents arc thus now a matter of public record, and these is accordingly no need for the Board to seal. any documents. We do order, however, that. the name5 of the three patients that have been identified thus far by initial only continue to be identified by initial only, so as to protect the privacy interests of those patients.

Cooperate regulations were intended to put licensees on notice that such willful and contumacious obstructive conduct which unnecessarily protracts investigative proceedings is professional misconduct.

When deciding the matter of W.C., we then made clear that, although the W.C. case marked the first time thas the Board enforced the Duty to Cooperate Regulation through disciplinary proceedings, "licensees should henceforth be on notice of our intent to enforce the regulation through more stringent discipline." In the Matter of W.C., Final Decision and Order, p. 20. Dr. Ambrose knew or should have known that his conduct blatantly violated the Duty to Cooperate regulations, and knew or should have been aware that, by engaging in such conduct, he was necessarily placing his continued licensure in this State in jeopardy.

Although the Attorney General urges that we presently suspend Dr. Ambrose's license to practice until such time as he appears before a Board Committee and then answers questions posed to his, we decline to presently do so, instead preferring to afford Dr. Ambrose one last chance to cooperate with the investigation. Dr. Ambrose should now unquestionably be aware of our position on the various legal arguments he has raised, and we trust (particularly in light of counsel's statements before the Board on September 8, 2004 that Dr. Ambrose would answer questions provided

that- it was stipulated thar, by doing so, he would not thereby waive all his 5th Amendment rights) that he will no longer continue his unfounded obstructive behavior.

WHEREFORE, it is on this 28th day of Sept., 2004 ORDERED:

1. Responden? Jebamoni Ambrose, M.D., is hereby reprimanded for having violated the Duty to Cooperate regulations, N.J.A.C. 13:45C-1.2 and N.J.A.C. 13:45C-1.3(a)(5), by having failed to answer any questions or to participate in any manner at a lawful inquiry concerning his medical practice.

2. Respondent Jebamoni Ambrose, M.D., is hereby assessed a civil penalty in the amount of $10,000 for having violated the Duty to Cooperate regulations, and is additionally ordered to pay costs Incurred In the pursuit of this matter, to include attorneys' fees incurred by the Attorney General to bring this matter before the hard. The Attorney General shall submit a written certification detailing all costs incurred in this matter. Respondent may thereafter, within 14 days, submit written objections to any item(s) sought as costs. In the event respondent does not submit any written objection to any costs sought, he shall remit the amount of costs sought by the Attorney General to the Board not later than 3C days from the date of the Attorney General's written certification. In the event respondent objects to any costs sought, the Board shall the.? consider this matter on

the papers and thereafter enter a supplemental order fixing the amount of costs to be assessed and setting the date by which said costs shall be paid.

3. Respondent is ordered to appear before a Committee of the Board at 124 Halsey Street, Newark, New Jersey on November 3, 2004 at 1:00 p.m. or as soon thereafter as this matter can be heard, for an investigative inquiry concerning respondent's general practice of medicine and concerning his care and treatment, record-keeping and prescribing for patients S.B., E.J.D. and C.D. While the Board recognizes that respondent may properly decline to answer any specific questions that may be posed to him based on a claim of his 5th Amendment Privilege against self-incrimination, respondent is cautioned that any blanket refusal to participate in the inquiry or to answer all questions that may be posed to him shall be deemed to be a further violation of the Duty to Cooperate regulations. In the event respondent fails to appear before a Committee of the Board as ordered on November 3, 2004, or in the event he then continues to refuse to parricipate in said inquiry and/or refuses to answer all questions that may be then posed to him (thereby further violating the Duty to Cooperate regulations),

respondent's license to practice medicine and surgery in the State of New Jersey shall be suspended on November 4, 2304.

NEW JERSEY STATE BOARD
OF MEDICAL EXAMINERS

By: _____
Bernard Robins, M.D.
Board President